

SENATE BILL 253

P3

2lr0815

By: **Senators Jacobs and Ferguson**

Introduced and read first time: January 25, 2012

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2012

CHAPTER _____

1 AN ACT concerning

2 **State Government – Administrative Procedure Act – ~~Proposed~~ Regulations**

3 FOR the purpose of ~~altering a certain period of time after which a unit in the~~
4 ~~Executive Branch of State government may adopt a proposed regulation;~~
5 ~~altering a certain period of time within which the Joint Committee on~~
6 ~~Administrative, Executive, and Legislative Review may make a certain~~
7 ~~determination and delay the adoption of a regulation in a certain manner;~~
8 ~~altering a certain period of time that provides the Committee with a further~~
9 ~~period of review of a proposed regulation under certain circumstances; altering~~
10 ~~a certain period of time for public comment on a proposed regulation; requiring~~
11 a unit to publish the text of a proposed regulation on the unit's Web site no later
12 than a certain number of business days after the date that the regulation is
13 published in the Maryland Register; requiring a unit that submits a ~~proposed~~
14 regulation to the Committee for approval of emergency adoption to publish the
15 text of the ~~proposed~~ regulation on the unit's Web site no later than a certain
16 number of business days after the date that the regulation is submitted to the
17 Committee for approval of emergency adoption; requiring a unit to publish a
18 ~~proposed~~ regulation on its Web site in a certain manner; requiring a unit to
19 develop and implement a mechanism for a person to receive certain electronic
20 alerts under certain circumstances; providing that the failure of a unit to
21 comply with certain provisions of law may not invalidate or affect the adoption
22 of certain regulations; requiring the Division of State Documents to report
23 certain compliance to the General Assembly on or before a certain date; and
24 generally relating to proposed regulations under the Administrative Procedure
25 Act.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
 2 Article – State Government
 3 Section 10–101(a), (b), (c), (f), (g), and (i), 10–109, and 10–112
 4 Annotated Code of Maryland
 5 (2009 Replacement Volume and 2011 Supplement)

6 ~~BY repealing and reenacting, with amendments,~~
 7 ~~Article – State Government~~
 8 ~~Section 10–111(a) and (b)(1)~~
 9 ~~Annotated Code of Maryland~~
 10 ~~(2009 Replacement Volume and 2011 Supplement)~~

11 BY adding to
 12 Article – State Government
 13 Section 10–112.1
 14 Annotated Code of Maryland
 15 (2009 Replacement Volume and 2011 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – State Government**

19 10–101.

20 (a) In this subtitle the following words have the meanings indicated.

21 (b) “Administrator” means the Administrator of the Division of State
 22 Documents.

23 (c) “Committee” means the Joint Committee on Administrative, Executive,
 24 and Legislative Review.

25 (f) “Register” means the Maryland Register.

26 (g) (1) “Regulation” means a statement or an amendment or repeal of a
 27 statement that:

28 (i) has general application;

29 (ii) has future effect;

30 (iii) is adopted by a unit to:

31 1. detail or carry out a law that the unit administers;

- 1 2. govern organization of the unit;
- 2 3. govern the procedure of the unit; or
- 3 4. govern practice before the unit; and

4 (iv) is in any form, including:

- 5 1. a guideline;
- 6 2. a rule;
- 7 3. a standard;
- 8 4. a statement of interpretation; or
- 9 5. a statement of policy.

10 (2) “Regulation” does not include:

11 (i) a statement that:

- 12 1. concerns only internal management of the unit; and
- 13 2. does not affect directly the rights of the public or the
14 procedures available to the public;

15 (ii) a response of the unit to a petition for adoption of a
16 regulation, under § 10–123 of this subtitle; or

17 (iii) a declaratory ruling of the unit as to a regulation, order, or
18 statute, under Subtitle 3 of this title.

19 (3) “Regulation”, as used in §§ 10–110 and 10–111.1 of this subtitle,
20 means all or any portion of a regulation.

21 (i) “Unit” means an officer or unit authorized by law to adopt regulations.

22 10–109.

23 This Part III of this subtitle applies only to a unit in the Executive Branch of
24 the State government.

25 ~~10–111.~~

26 ~~(a) (1) Except as provided in subsection (b) of this section, a unit may not~~
27 ~~adopt a proposed regulation until:~~

1 ~~(i) after submission of the proposed regulation to the~~
 2 ~~Committee for preliminary review under § 10-110 of this subtitle; and~~

3 ~~(ii) at least [45] 55 days after its first publication in the~~
 4 ~~Register.~~

5 ~~(2) (i) If the Committee determines that an appropriate review~~
 6 ~~cannot reasonably be conducted within [45] 55 days and that an additional period of~~
 7 ~~review is required, it may delay the adoption of the regulation by so notifying the~~
 8 ~~promulgating unit and the Division of State Documents, in writing, prior to the~~
 9 ~~expiration of the [45-day] 55-DAY period.~~

10 ~~(ii) If notice is provided to the promulgating unit pursuant to~~
 11 ~~subparagraph (i) of this paragraph, the promulgating unit may not adopt the~~
 12 ~~regulation until it notifies the Committee, in writing, of its intention to adopt the~~
 13 ~~regulation and provides the Committee with a further period of review of the~~
 14 ~~regulation that terminates not earlier than the later of the following:~~

15 ~~1. the 30th day following the notice provided by the~~
 16 ~~promulgating unit under this subparagraph; or~~

17 ~~2. the [105th] 115TH day following the initial~~
 18 ~~publication of the regulation in the Register.~~

19 ~~(3) The promulgating unit shall permit public comment for at least~~
 20 ~~[30] 40 days of the [45-day] 55-DAY period under paragraph (1)(ii) of this subsection.~~

21 ~~(b) (1) The unit may adopt a proposed regulation immediately if the unit:~~

22 ~~(i) declares that the emergency adoption is necessary;~~

23 ~~(ii) PUBLISHES THE PROPOSED REGULATION ON ITS WEB~~
 24 ~~SITE IN ACCORDANCE WITH § 10-112.1 OF THIS SUBTITLE;~~

25 ~~[(ii)] (iii) submits the proposed regulation to the Committee~~
 26 ~~and the Department of Legislative Services, together with the fiscal impact statement~~
 27 ~~required under subsection (c) of this section; and~~

28 ~~[(iii)] (iv) has the approval of the Committee for the emergency~~
 29 ~~adoption.~~

30 10-112.

31 (a) (1) This subsection does not apply to the emergency adoption of a
 32 regulation.

1 (2) To have a proposed regulation published in the Register, a unit
2 shall submit to the Administrator:

3 (i) the proposed regulation; and

4 (ii) a notice of the proposed adoption.

5 (3) The notice under this subsection shall:

6 (i) state the estimated economic impact of the proposed
7 regulation on:

8 1. the revenues and expenditures of units of the State
9 government and of local government units; and

10 2. groups such as consumer, industry, taxpayer, or trade
11 groups;

12 (ii) include a statement of purpose;

13 (iii) satisfy the requirements of § 2–1505.2 of this article;

14 (iv) comply with § 7–113(c) of the Human Services Article; and

15 (v) give persons an opportunity to comment before adoption of
16 the proposed regulation, by:

17 1. setting a date, time, and place for a public hearing at
18 which oral or written views and information may be submitted; or

19 2. giving a telephone number that a person may call to
20 comment and an address to which a person may send comments.

21 (4) (i) The estimated economic impact statement required under
22 paragraph (3)(i) of this subsection shall state whether the proposed regulation imposes
23 a mandate on a local government unit.

24 (ii) If the proposed regulation imposes a mandate, the fiscal
25 impact statement shall:

26 1. indicate whether the regulation is required to comply
27 with a federal statutory or regulatory mandate; and

28 2. include, in addition to the estimate under paragraph
29 (3)(i)1 of this subsection, the estimated effect on local property tax rates, if applicable,
30 and if the required data is available.

1 (b) As soon as the Committee approves emergency adoption of a regulation,
2 the Committee shall submit the regulation to the Administrator.

3 (c) If a regulation under this section amends or repeals an adopted
4 regulation, the text of the regulation under this section shall show the changes with
5 the symbols that the Administrator requires.

6 **10-112.1.**

7 (A) **WHENEVER A UNIT PUBLISHES A PROPOSED REGULATION IN THE**
8 **REGISTER IN ACCORDANCE WITH § 10-112 OF THIS SUBTITLE, THE UNIT SHALL**
9 **PUBLISH THE TEXT OF THE PROPOSED REGULATION ON THE UNIT'S WEB SITE**
10 **NOT LATER THAN 3 BUSINESS DAYS AFTER THE DATE THAT THE PROPOSED**
11 **REGULATION IS PUBLISHED IN THE REGISTER.**

12 (B) **WHENEVER A UNIT SUBMITS A ~~PROPOSED~~ REGULATION TO THE**
13 **COMMITTEE FOR APPROVAL ~~OF~~ AS AN EMERGENCY ADOPTION IN ACCORDANCE**
14 **WITH § 10-111(B) OF THIS SUBTITLE, THE UNIT SHALL PUBLISH THE TEXT OF**
15 **THE ~~PROPOSED~~ REGULATION ON THE UNIT'S WEB SITE NOT LATER THAN 3**
16 **BUSINESS DAYS AFTER THE DATE THAT THE ~~PROPOSED~~ REGULATION IS**
17 **SUBMITTED TO THE COMMITTEE FOR APPROVAL OF EMERGENCY ADOPTION.**

18 (C) **TO COMPLY WITH THE PUBLICATION REQUIREMENT OF THIS**
19 **SECTION, A UNIT SHALL:**

20 (1) **PUBLISH THE TEXT OF THE ~~PROPOSED~~ REGULATION ON THE**
21 **UNIT'S HOME PAGE ON ITS WEB SITE; OR**

22 (2) **PROVIDE A LINK ON THE UNIT'S HOME PAGE TO THE TEXT OF**
23 **THE ~~PROPOSED~~ REGULATION IF THE TEXT OF THE REGULATION IS AVAILABLE**
24 **ELSEWHERE ON THE UNIT'S WEB SITE.**

25 (D) **A UNIT SHALL DEVELOP AND IMPLEMENT A MECHANISM BY WHICH**
26 **A PERSON MAY RECEIVE AN ELECTRONIC ALERT WHEN A REGULATION IS**
27 **PUBLISHED ON THE UNIT'S WEB SITE UNDER THIS SECTION.**

28 (E) **THE FAILURE OF A UNIT TO PUBLISH THE TEXT OF A REGULATION**
29 **IN A TIMELY MANNER UNDER THIS SECTION MAY NOT INVALIDATE OR**
30 **OTHERWISE AFFECT THE ADOPTION OF THE REGULATION.**

31 **SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,**
32 **2012, the Division of State Documents shall report to the General Assembly, in**
33 **accordance with § 2-1246 of the State Government Article, regarding the compliance**

1 of the units in the Executive Branch of the State government with the requirements of
2 this Act.

3 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect ~~October~~ June 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.